

REMARKS/ARGUMENTS

In the restriction requirement dated November 6, 2008, the Examiner delineated the following inventions as being patentably distinct.

Group 1: Claims 1-8, drawn to a process for making compounds of formula (1).

Group 2: Claims 9-12, drawn to compounds of formulas (6), (5), (4) and (3).

Applicants provisionally elect with traverse the invention of Group 1 (Claims 1-8) drawn to a process for making the compounds of formula (1).

The claims of Groups 1 and 2 are integrally linked as intermediate and final product (combination and sub-combination). Restriction is only proper if the claims of the restricted groups are independent or patentably distinct and there would be a serious burden placed on the Examiner if restriction is not required (M.P.E.P. §803). The burden of proof is on the Examiner to provide reasons and/or examples to support any conclusions in regard to patentable distinction. Moreover, when making a lack of unity of invention in a national stage application the Examiner has the burden of explaining why each group lacks unity of invention with each other (i.e., why there is no single inventive concept) specifically describing the unique special technical feature in each group (M.P.E.P. §1892.03(d)).

Applicants respectfully traverse the restriction requirement on the ground that the Examiner has not carried out the burden of providing any reasons or examples to support any conclusions that the claims of the restricted groups are patentably distinct or providing any reasons and/or examples to support any conclusions that the groups lack unity of invention.

The Examiner asserts that Groups 1 and 2 do not relate to a single general inventive concept under PCT Rule 13.1 and 13.2 because they lack the same corresponding special technical feature. The Examiner however has not considered that the claims in each group are considered to have unity of invention under 37 C.F.R. §1.475(b) in which the claims are considered to have unity of invention. Applicants submit that while PCT Rule 13.1 and 13.2

are applicable, 37 C.F.R. §1.475 provides no relevant part that a “national stage application containing claims to different categories of invention will be considered to have unity of invention if the claims are drawn to product, process, and method of use.

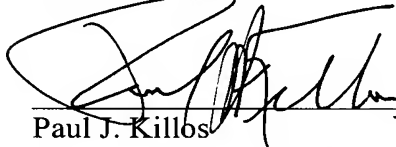
Moreover, Applicants respectfully submit that a search of all the claims would not impose a serious burden on the Office. As the Office has not shown any evidence that a restriction requirement should be required when the International Report did not, restriction is believed to be improper.

For the reasons set forth above, Applicants request that the Restriction Requirement be withdrawn.

Applicants respectfully submit that the above-identified application is now in condition for examination on the merits and an early notice of such action is earnestly solicited.

Respectfully submitted,

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A handwritten signature in black ink, appearing to read 'Paul J. Killos', is written over a horizontal line.

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